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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,666	12/20/2005	Richard Edmund Tostevin	920670-100963	7846

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BARNES & THORNBURG LLP  
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CHICAGO, IL 60690-2786

EXAMINER
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SWINEHART, EDWIN L

ART UNIT	PAPER NUMBER
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3617

NOTIFICATION DATE	DELIVERY MODE
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01/04/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patent-ch@btlaw.com

<b>Office Action Summary</b>	Application No. 10/561,666	Applicant(s) TOSTEVIN, RICHARD EDMUND	
	Examiner Ed Swinehart	Art Unit 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 2-33,35-39 and 41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 2-17,20-22,25-33,35-39 and 41 is/are rejected.
- 7) ☒ Claim(s) 18,19,23 and 24 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

1. The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

### **CORRECTION IS REQUIRED IN RESPONSE TO THIS ACTION**

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
  - (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
  - (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
  - (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
  - (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
  - (f) BACKGROUND OF THE INVENTION.
    - (1) Field of the Invention.
    - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
  - (g) BRIEF SUMMARY OF THE INVENTION.
  - (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
  - (i) DETAILED DESCRIPTION OF THE INVENTION.
  - (j) CLAIM OR CLAIMS (commencing on a separate sheet).
  - (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
  - (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the means affording

movement of the mast must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 14-16 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter

which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Applicant claims the tabernacle affording movement of the mast to a stowed position, however the mechanism/means permitting such an articulation has not been disclosed to a degree such that one of ordinary skill in the art could make and/or use same.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 41 is rejected under 35 U.S.C. 102(b) as being anticipated by Wilkie.

Wilkie discloses the claimed invention, including a hull, a mast mounted to the hull and including two side portions which extend laterally outwardly of the hull, and are joined at the top, and an upwardly extending main spar attached near the apex of the mast.

7. Claims 2-4,14-17,20-22,27-33,35-39 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by Rudloff.

Rudloff discloses the claimed invention, including a hull **10**, tabernacle (mast foot), a mast **22** constructed as a closed loop, and a boom attached to the apex of the mast portions.

Re "sailing boat", such is intended use, carrying no weight in the claim in this instance. Furthermore, Rudloff discloses use on water.

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 4-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudloff.

Rudloff fails to disclose the exact degree of beam of the mast as claimed, however, lacking any expressed criticality for such widths, it would have been well within the skill of the ordinary routineer working in the art at the time of the invention, and obvious to provide a wider boom.

Such a modification would have been desirable so as to accommodate different riders and types of sails.

10. Claim 9-13 rejected under 35 U.S.C. 103(a) as being unpatentable over Rudloff in view of Kunz.

Rudloff fails to show his hollow mast as being closed and filled with foam.

Kunz teaches the filling of a mast with foam.

It would have been obvious to one of ordinary skill in the art at the time of the invention to fill the mast of Rudloff with foam as taught by Kunz. Such a filling would inherently close the mast as well.

Such a combination would have been desirable so as to aid in recovery after overturning.

Re claim 11, such is method of making, carrying no weight in these apparatus claims.

11. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudloff in view of Prolss.

Rudloff fails to show the notoriously old and well known mast/boom configuration in which such are tapered from one end to the other, as illustrated by Prolss.

It would have been obvious to one of ordinary skill in the art at the time of the invention to taper the boom and mast of Rudloff as taught by Prolss.

Such a combination would have been desirable, since it is known that bending loads will lessen as progression from one end of the boom to the other occurs, and therefore the amount of material employed and therefore the weight of the boom can be reduced, as compared with a boom of constant diameter.

Re claim 26, such is inherent with a tapered component.

12. Claims 18,19,23 and 24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

13. Applicant's arguments filed 9/4/2007 have been fully considered but they are not persuasive.

Applicant argues that the means permitting movement of the mast has been adequately disclosed, and references portions of the specification in support thereof.

The examiner has reviewed such referenced portions, and such merely mention that such movement is possible. The mounting means affording such movement has not been disclosed.

Applicant argues that the mast of Wilkie does not extend outwardly as now claimed.

The examiner does not agree. Although the mast of Wilkie may not extend outwardly to the same degree as that of the present invention, figure 2 clearly shows a slight outward bowing of the mast such that it extends slightly outwardly of the hull. Applicant's claim 41 as amended does not define over such an outward bowing.

Applicant argues that Rudloff fails to show a hollow structure which floats on water.

In response, the claims do not call for a hollow structure, merely a "hull". Rudloff clearly discloses use on water, and therefore such a water-borne craft is a hull, regardless of shape or construction.

14. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

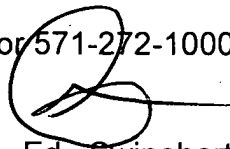


the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ed Swinehart whose telephone number is 571-272-6688. The examiner can normally be reached on Monday through Thursday 6:30 am to 2:00 pm..

/ If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Samuel Morano can be reached on 571-272-6684. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Ed Swinehart  
Primary Examiner  
Art Unit 3617